



Santa Clara Police Training Flash



Santa Clara City Code ~~8.35.130~~ (Repealed)

****EFFECTIVE IMMEDIATELY****

In 2017, Penal Code 308 was amended and stated any person, firm, or corporation that knowingly or should have known gives, sells, or furnishes any other person under the age of 21 tobacco, tobacco products, or any controlled substances is guilty of a misdemeanor.

In 2019, the City of Santa Clara implemented **City Code 8.35.130** which made it unlawful for persons under the age of 21 to possess tobacco or tobacco products including electronic smoking devices and e-liquids.

City code 8.35.130 has been repealed and officers **cannot** cite persons under 21 years old for **possession** of tobacco or tobacco related products. The prior training flash published in 2019 shall be disregarded. The SCPD Resource Guide has also been updated to reflect the changes.

TOBACCO POSSESSION BY MINORS

On 06-15-2019, a modification to Santa Clara City Code (SCCC) was presented to City Council and unanimously approved. The modification includes an addition of . . .

SCCC §8.25.130: *"It shall be unlawful for persons under the age of twenty-one (21) years to possess tobacco or tobacco products (including electronic smoking devices and e-liquids whether or not they contain nicotine or tobacco), as defined in Penal Code §308 and Business and Professions Code §22950.5, in the City of Santa Clara. This section shall not apply to active duty military personnel of at least 18 years of age."*

This code now re-affirms an authority to investigate a matter involving a minor in possession of tobacco or tobacco products; **however**, it is the policy of the SCPD that this new section be used for **educational purposes** (See "Draft" of **Manual Section 411.6 - Juvenile Citations** - Attached). Contacts involving those 17 years of age, or younger, should at most be documented with an Informational Juvenile Contact Report for referral to the Juvenile Probation Officer (JPO) **for education and diversion; NOT** a criminal or administrative citation. In most circumstances, a simple phone call from the officer at the scene to a parent or guardian may be enough to deter future tobacco use. If a JCR is issued, the JPO will then contact the juvenile's parent or guardian and have the juvenile write an essay regarding "the harms of tobacco use." Under **NO** circumstance should a juvenile be taken into custody for a violation of this new code.

If persons 18 to 20 years old are contacted in possession of tobacco or tobacco products, at most an Administrative non-criminal citation may be issued (\$100 penalty) to the individual. Again, the officer could simply use the contact as an opportunity to educate the individual as opposed to issuing an administrative citation. That discretion is left up to the involved officer.

For background purposes: Training Flash 2016-13 ("Changes to Penal Code 308") outlined details of CA Senate Bill 7, which took effect 06-09-2016. TF 2016-13 included correspondence from Ed Jeff Rosen, SB 7 raised the age from 18 to 21 of a person to whom tobacco, e-cigarettes, or vape products may be lawfully sold, given, or furnished (exemption active duty military personnel of at least 18). The Bill also changed Penal Code 308 by excising the prohibition of possession of tobacco by a minor.

Thus, LEAs could no longer cite a minor in possession of tobacco for PC 308(b); however, local town or city codes could enact citable sections prohibiting possession of tobacco by a minor.

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